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EXAMINER

SIEFKE, SAMUEL P

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 04/10/2002

5

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/809,428

Applicant(s)

GLATTSTEIN ET AL.

Examiner

Samuel P Siefke

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-21 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Objections*

Claim **15** is objected to because of the following informalities: Spacing need to between "11 having". Appropriate correction is required.

Claim **9** and **15** is objected to because of the following informalities: Misspelled word "it's", Examiner suggests spelling be "its". Appropriate correction is required

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims **1-9,11-15, 21** rejected under 35 U.S.C. 102(e) as being anticipated by Dumitrescu et al. (USPN 6,043,097).

Dumitrescu discloses a reagent package that comprises: a molded casing (casted) having a distinct reaction chamber; two distinct cell adapted for receiving a crushable ampoule and having a flexible pressing area at its outer wall for pressing and crushing an ampoule; an opening between the chamber and a cell is a channel form; a filter to prevent the passage of glass shards from the cell to the chamber; an inlet

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leading from the outside into the inner space of the reaction chamber for inserting a sample of a tested material; a sample probe having collecting mean at its tip for sampling outer material and delivering it through the inlet to the reaction chamber (col. 2, line 9 – col. 3, line 40; col. 4, line 40 – col. 5, line 38; col. 8, lines 27-30; col. 10, lines 27-49; col. 11, lines 10-33)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim **19** is rejected under 35 U.S.C. 103(a) as being unpatentable over Dumitrescu et al. (USPN 6,043,097) in view of Matner et al. (USPN 5,418,167).

Dumitrescu discloses a reagent package that comprises: a molded casing (casted) having a distinct reaction chamber; two distinct cell adapted for receiving a crushable ampoule and having a flexible pressing area at its outer wall for pressing and

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crushing an ampoule; an opening between the chamber and a cell is a channel form; a filter to prevent the passage of glass shards from the cell to the chamber; an inlet leading from the outside into the inner space of the reaction chamber for inserting a sample of a tested material; a sample probe having collecting mean at its tip for sampling outer material and delivering it through the inlet to the reaction chamber.

Dumitrescu does not disclose any information regarding the cast molding be of transparent form.

Matner teaches a rapid read-out biological indicator that incorporates a casing that is made from a transparent material in order to allow for a change in color or fluorescence to be visually observed without disassembling the indicator device (col. 14, lines 15-30). Therefore it would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Dumitrescu to use a transparent material of Matner for the purpose of easily identifying a color change in the indicator device.

Claim **17** and **18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumitrescu et al. (USPN 6,043,097) in view of Brown et al. (USPN 4,732,850).

Dumitrescu discloses a reagent package that comprises: a molded casing (casted) having a distinct reaction chamber; two distinct cell adapted for receiving a crushable ampoule and having a flexible pressing area at its outer wall for pressing and crushing an ampoule; an opening between the chamber and a cell is a channel form; a filter to prevent the passage of glass shards from the cell to the chamber; an inlet leading from the outside into the inner space of the reaction chamber for inserting a

sample of a tested material; a sample probe having collecting mean at its tip for sampling outer material and delivering it through the inlet to the reaction chamber.

Dumitrescu does not disclose any information regarding the use of a fulcrum for reducing the pressure force needed to break the ampoule.

Brown teaches a frangible container with a rupturing device for the sole purpose of reducing the pressure force needed to crush the ampoule (col. 3, lines 3-10). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Dumitrescu to use a fulcrum device of Brown to reduce the pressure needed to crush the ampoule.

Claim **10** is rejected under 35 U.S.C. 103(a) as being unpatentable over Dumitrescu et al. (USPN 6,043,097).

Dumitrescu discloses a reagent package that comprises: a molded casing (casted) having a distinct reaction chamber; two distinct cell adapted for receiving a crushable ampoule and having a flexible pressing area at its outer wall for pressing and crushing an ampoule; an opening between the chamber and a cell is a channel form; a filter to prevent the passage of glass shards from the cell to the chamber; an inlet leading from the outside into the inner space of the reaction chamber for inserting a sample of a tested material; a sample probe having collecting mean at its tip for sampling outer material and delivering it through the inlet to the reaction chamber.

Dumitrescu does not teach a casing wherein the inlet is provided with a one-time-only breakable seal, however it would have been obvious to provide a frangible seal over the sample inlet for reasons of avoiding contamination.

Claim **20** is rejected under 35 U.S.C. 103(a) as being unpatentable over Dumitrescu et al. (USPN 6,043,097).

Dumitrescu discloses a reagent package that comprises: a molded casing (casted) having a distinct reaction chamber; two distinct cell adapted for receiving a crushable ampoule and having a flexible pressing area at its outer wall for pressing and crushing an ampoule; an opening between the chamber and a cell is a channel form; a filter to prevent the passage of glass shards from the cell to the chamber; an inlet leading from the outside into the inner space of the reaction chamber for inserting a sample of a tested material; a sample probe having collecting mean at its tip for sampling outer material and delivering it through the inlet to the reaction chamber.

Dumitrescu does not teach a reagent package comprising a color chart in close proximity to the detection space, however it would have been obvious to provide a color chart in close proximity to the detection space because one could be provided with an immediate comparison of the detection space with the color chart.

#### ***Allowable Subject Matter***

Claim **16** is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 16 would be allowable because no prior art teaches an irreversible interlocking means for a probe and a casing together.

**Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P Siefke whose telephone number is 703-306-0093. The examiner can normally be reached on M-F 7:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

SPS  
April 8, 2002



  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700